C.A.L.L.

City Attorney Law Letter

July 1, 2021
Issue 21-3

SPD NEW LAWS CLASSES:

Wednesday, July 7, 2021, 1:00 p.m., Springdale High School Meeting Room
Friday July 9, 2021, 1:00 p.m., Springdale High School Meeting Room
Please confirm location the day before class.

Excessive Force! Search and Seizure!

In This Issue:

City Attorney Law Letter
Springdale City Attorney's Office
201 Spring Street
Springdale, Arkansas, 72764
Editor – Hon. Ernest B. Cate, City Attorney
Publisher – David Dero Phillips, Deputy City Attorney
Contributing Authors: Taylor Samples, Senior Deputy City Attorney,
David Dero Phillips, Deputy City Attorney, Ryan Renauro, Deputy City Attorney

The City Fireworks Ordinance
Code of Ordinances for the City of Springdale
Section 46-56

Every year at about this time numerous questions emerge dealing with fireworks. Most people will rely on advice given to them by the Police Department. In addition, the Police Department inevitably receives a substantial number of calls regarding fireworks issues in the city from the end of June through the first part of July of any year. The primary City ordinance on fireworks is found at Section 46-56 of the Code of Ordinances for the City of Springdale.

Selling Fireworks - Section 46-56(a)

Prior to 2003, fireworks sales within the city limits were strictly prohibited by ordinance. However, in 2003, the Springdale City Council amended the fireworks ordnance to allow that. Now, in order to sell fireworks in the City, a permit to sell fireworks must be obtained from the City Clerk. Before a location can obtain a permit to sell fireworks, certain requirements must be met. Then, once a permit has been issued, the ordinance places several restrictions on the selling of fireworks within the city limits. Specifically:

- No fireworks shall be sold or stored within a permanent structure of the city.
- Fireworks stands shall be located in C-2,C-5, or A-1 zones. The A-1 property must have frontage on a federal or state highway.
- Fireworks may only be sold between June 28th and July 5th.
- All locations where fireworks are sold must comply with all fire codes and must be inspected by the fire marshal prior to the sale of fireworks.
- No person selling fireworks within the city shall be allowed to sell any fireworks which travel on a stick as discharge of these types of fireworks is prohibited within the city.
- No fireworks stand shall be located within 250 feet of a fuel dispensing facility.
- All fireworks stands must have at least a 50 foot setback from the street/highway.
- No person under the age of 16 shall be allowed to purchase fireworks in the city.
- All locations where fireworks are sold within the city shall post a sign, visible to the public, which states, "The discharge of bottle rockets or fireworks that travel on a stick are prohibited in the City of Springdale."

Prohibited Fireworks – Section 46-56 (b)

It is a violation of the City's fireworks ordinance for anyone to discharge or sell bottle rockets within the city limits of Springdale, even during the time when other fireworks are allowed to be discharged. However, the mere possession of bottle rockets is not prohibited.

Permitted Locations/Times – Section 46-56 (c)

Section (c) of the ordinance sets forth when legal fireworks may be discharged within the city limits. The ordinance provides that legal fireworks may be discharged on private property between the hours of 8:00 a.m. and 10:00 p.m. beginning on July 1st and ending on July 4th. Therefore, anyone discharging fireworks after 10:00 p.m. on the night of the 4th would be in violation of the City's fireworks ordinance.

To be in compliance with the ordinance, the owner of the private property where the fireworks are being discharged must consent to this activity. Furthermore, the ordinance requires that all persons under the age of 16 who are participating in the discharge of fire-works must be supervised by a person of at least 21 years of age.

Review by Ernest B. Cate, City Attorney
(Reprint from 2020 CALL)

Top of Document

Warrantless Searches – Parolee's Expectation of Privacy
Clingmon v. State
2021 Ark. App 107
Arkansas Court of Appeals
March 10, 2021

Arkansas County Sheriff's Office deputies searched the Defendant's home investigating new criminal activity. Defendant was a parolee who had signed a search waiver as a condition of his parole and the search was conducted pursuant to Ark. Code Ann. § 16-93-106 which authorizes any certified law enforcement officer or DCC officer to conduct a warrantless search of a parolee's person, residence, or vehicle at any time. The Defendant filed a Motion to Suppress the evidence found as a result of the search conducted pursuant to the waiver, claiming that § 16-93-106 is unconstitutional. After a hearing and the entry of a conditional plea, the Defendant appealed the Circuit Court's finding that the statute was constitutional and the denial of the Defendant's Suppression Motion.

Facts:

> On August 18, 2018, Arkansas County Sheriff's Office searched the home of Alax Clingmon and he was subsequently charged. Deputies visited and searched the home after they received a call from the prosecutor's office and had been advised of possible criminal activity by Clingmon. The Defendant was not home so deputies called the Defendant's father who agreed to come to the house and let them in. The deputies searched the home based on the search waiver signed by the Defendant pursuant to his parole agreement. The Defendant's father let the officers in the house and showed them where the Defendant's room was and there the deputies found methamphetamine, ecstasy, digital scales, and other drug paraphernalia. Deputies testified at the Motion to Suppress hearing that no parole officer was present at the time of the search. Clingmon v. State, 2021 Ark. App 107 at *1-4.

Law:

The Defendant challenged the constitutionality of Ark. Code Ann. § 16-93-106 at a suppression hearing. The Circuit Court "found the statute to be 'reasonable and constitutional,' that it extends the right to conduct a warrantless search of parolees to community-correction officers and law enforcement officers, and that it requires the search to be done in a reasonable manner but does not require reasonable suspicion." Clingmon v. State, 2021 Ark. App 107 at *4-5.

Ark. Code Ann. § 16-93-106 applies to anyone placed on probation or parole and requires each supervisee to sign a waiver consenting to warrantless searches of the supervisee's residence, vehicle, or person at any time when requested by a certified law enforcement officer or DCC officer; the statute does not require the officer to have articulable suspicion of a criminal offense but does required that the search be reasonable. Ark. Code Ann. § 16-93-106.

Cherry v. State was decided in 1990 holding that a parolee's advance consent to warrantless searches *when reasonable grounds of parole violations existed* was valid because "special needs of the parole process call for intensive supervision of the parolee making the warrant requirement impractical… [parolees] have a diminished expectation privacy [as they are] still in the custody of the penal institution." Cherry v. State, 302 Ark. 462, 467, 791 S.W.2d 354, 356–57 (1990). *Cherry* was decided prior to the enactment of Ark. Code Ann. § 16-93-106 and did not contemplate consent to warrantless searches without reasonable suspicion and noted that the parolee's consent only extended to supervising officers, not all law enforcement.

The Defendant relied on the holding of *Lane v. State*, which relied on *Cherry*, in which the Arkansas Supreme Court held that "parole officers may carry out searches only if reasonable grounds exist to investigate whether the parolee had violated the terms of his parole." Lane v. State, 2017 Ark. 34, at 3, 513 S.W.3d 230, 233 (citing *Cherry v. State*, 302 Ark. 462, 791 S.W.2d 354 (1990)).

In *Samson v. California*, the US Supreme Court applied a totality of the circumstances test to a suspicionless search of a parolee authorized under state law and considered four factors: 1- language of the authorizing state statute; 2- the great state interest in reducing recidivism; 3- the fact that the parolee was serving an active prison sentence and was given the choice to remain incarcerated or agree to parole terms; and 4- by choosing parole, the parolee knowingly and purposely accepted the conditions of parole. *Samson v. California*, 547 U.S. 843, at 857 (2006).

Analysis:

In this case, Sheriff's Office deputies searched the Defendant's home, while he was not present, based solely on information received from the prosecutor's office that the Defendant could possibly be involved in criminal activity. Clingmon v. State, 2021 Ark. App 107 at 4. The deputies were never acting under the color of authority as parole or supervising officers and were investigating new criminal conduct as opposed to violations of the Defendant's parole. Id.

The deputies searched the Defendant's home based on the authority of the language of Ark. Code Ann. § 16-93-106 which clearly applies to any law enforcement officer whether a supervising officer or otherwise, and only requires that the search be reasonable. The Defendant challenged the statute's constitutionality, stating that it "'effectively nullifies the Fourth Amendment rights of a parolee' and authorizes police to conduct a search 'without any legal criteria, limitation, or restraints.'" Id., at 6. The Defendant also requested the Court declare the statute unconstitutional because it was "rife with potential for abuse." Id.

In considering the statute's constitutionality, the Court drew distinctions between *Lane* and *Cherry*, noting that *Cherry* was decided prior to the enactment of the statute and *Lane* was decided relying on *Cherry* as authority. Id., at 10. The Court held that reasonable suspicion of criminal activity is not required by § 16-93-106 and found itself answering the same questions the US Supreme Court considered in *Samson v. California*. Id.

In *Samson*, the US Supreme Court considered all the facts in applying a totality of the circumstances standard, including: 1- language of the authorizing state statute; 2- the great state interest in reducing recidivism; 3- the fact that the parolee was serving an active prison sentence and was given the choice to remain incarcerated or agree to parole terms; and 4- by choosing parole, the parolee knowingly and purposely accepted the conditions of parole. *Samson v. California*, 547 U.S. 843, at 857 (2006).

The *Clingmon* Court held that, just as in *Samson*, suspicionless searches of parolees were valid since Arkansas law does not require articulable suspicion of a crime and parolees are given the choice to continue their sentence through incarceration but knowingly sign the waivers as conditions of parole. *Clingmon*, at 7. Lastly, the *Clingmon* Court noted that that § 16-93-106 still requires searches to be conducted in a reasonable manner, thereby not allowing law enforcement to be unrestrained when conducting searches pursuant to the statute. Id., at 10.

Reviewed by Ryan Renauro, Deputy City Attorney

Top of Document

Body Slamming a Passive Arrestee is Unreasonable.
MacKintrush v. Pulaski Cty. Sheriff's Dep't
987 F.3d 767 (8th Cir. 2021)

Pulaski County Deputy Hodges placed Courtney MacKintrush under arrest for Criminal Mischief in the Second Degree after MacKintrush had destroyed some property at a halfway house. MacKintrush was taken to the Pulaski County jail where he became more agitated. MacKintrush was being led to a cell and Hodges had his hand on MacKintrush's shoulder. MacKintrush shrugged off Hodges' grip and Hodges lifted and slammed MacKintrush to the floor. MacKintrush was knocked unconscious.

A "passive arrestee" has a right to be free from excessive force. This is considered "clearly established" law in all federal judicial circuits. This doctrine is beyond debate. In this case, the U.S. Eighth Circuit Court of Appeals quoted the earlier case of Shelton v. Stevens, 964 F.3d 747, 754 (8th Cir. 2020) where it held that it is "unreasonable for an officer to body-slam a nonviolent, nonthreatening misdemeanant."

MacKintrush was not "actively resisting" when he shrugged off Deputy Hodges' touch. MacKintrush continued to walk where directed and obeyed commands. The act of shrugging off the deputy's hand was "ambiguous."

The Court also quoted the case of Karels v. Storz, 906 F.3d 740, 747 (8th Cir. 2018). In that case, which was reviewed in the fourth quarter, 2018 edition of CALL, the Court held that use of force in ambiguous circumstances is not reasonable. In Karels, Deputy Storz was placing Karels under arrest and was about to put hand cuffs on her. Karels was holding a lit cigarette and demanding to put it out. Storz forced the hand of Karels to hold then release the lit cigarette into an ash can.

Since Blazek v. City of Iowa City, 761 F.3d 920, 922-23 (8th Cir. 2014), Court analysis of the totality of circumstances of an allegation of excessive force has included a detailed review of each distinct act by law enforcement. Though an arrested suspect may be over-all non-compliant, each discrete use of force must be traceable to a specific act of non-compliance. If the act in question is ambiguous, in other words, could be interpreted in a way other than resisting, the use of force may be considered unreasonable and the employing officer may be liable, as in this case.

Qualified immunity was denied in this case.

Courtney MacKintrush
Booking Photo.

Reviewed by David D. Phillips,
Deputy City Attorney

Top of Document

Spraying Pepper Gas and Body Slamming a Resisting Arrestee is Reasonable.
Jacobsen v. Klinefelter
992 F.3d 717 (8th Cir. 2021)

Gary Jacobsen was attempting to enter an area marked "RESTRICTED AREA- AUTHORIZED PERSONNEL ONLY when he was restrained by Deputy Klinefelter of the Cass County Sherriff's Office. Klinefelter initially grabbed Jacobsen's arm and Jacobsen shoved Klinefelter backward. Klinefelter warned Jacobsen that force would be used if he did not leave. The two scuffled over a canister of tear gas after it was deployed. Jacobsen pinned Klinefelter against a wall during the scuffle. Other deputies arrived and Jacobsen was eventually arrested.

All law enforcement officers are presumed to know all law regarding civil rights and use of force. Where an officer is alleged to use excessive force, the Court will look at the particular conduct to determine if it violates existing, or "clearly established" law. The specific facts of each case, when compared to comparable past cases, determine the reasonableness of the act.

Officers may use force to make arrests, if the arrest is itself reasonable. A reasonable arrest is supported by probable cause of a criminal violation. Once a person is placed under arrest, the arrested subject has a duty to cooperate with the arrest under both Arkansas and federal law.

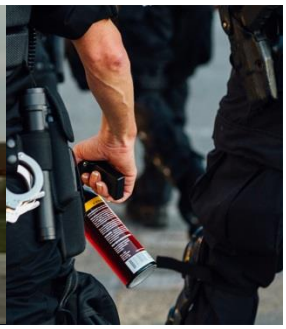
The arrest was based on Klinefelter's belief that Jacobsen was committing criminal trespass. In Arkansas law, that happens when someone enters or stays in an area despite a posted notice or a verbal warning to stay out or leave. The Court held that the acts in question were a violation of similar law in Missouri.

The acts of shoving the deputy, seizing the pepper spray canister and pinning the deputy against the wall were acts of active resistance which placed the deputy "in fear for his safety." The deputy's acts of deploying pepper spray, striking the subject and taking him to the ground were reasonable given the initial physical act of resistance. No previous settled case established any precedent or law to the contrary.

Where case law does not place the law enforcement officer on notice of prohibited specific acts, that officer is entitled to qualified immunity. The use of chemical irritants was held to be "not unreasonable." They therefore remain an available tool to law enforcement.

Qualified immunity was granted and the case was dismissed.

Reviewed by David D. Phillips,
Deputy City Attorney



Top of Document

Student Resource Officer Seizure of Student in School Setting
L.G. v. Columbia Pub. Sch.
990 F.3d 1145 (8th Cir. 2021)

We do not often see Student Resource Officer cases. This one comes from Columbia Missouri. L.G. was a sixteen year old student there.

Student Resource Officer Keisha Edwards met L.G. in the school office and told L.G. that detectives wanted to talk to her in another room. SRO Edwards escorted L.G. to that room and left her with the detectives, closing the door as she left.

L.G.'s family sued the school district under 42 USC §1983 for violation of civil rights, specifically, an unconstitutional seizure. L.G.'s lawsuit also alleged that her rights were clearly established at the time. This Appeals Court decision focuses on only the acts of the SRO, who filed to be dismissed from the lawsuit.

While the encounter overall was a "seizure" for Fourth Amendment purposes, the SRO's role was characterized as "minimal and ministerial." Many factors of a seizure were not present during the SRO's interaction with the child. There was no physical force or display of weapons, no physical contact and no forceful tone of language. The Court held that the SRO role was "incidental" and "nominal" and that a reasonable officer would not have been on notice that her conduct violated existing precedent.

A further complication weighing against viewing this act as a seizure is the public-school setting. The Fourth Amendment applies differently in schools. Students at school have a "lesser expectation of privacy" than the rest of the population in general. The Court noted that, while L.G. would not have felt free to leave, "... we suspect students rarely feel otherwise while in school..." L.G. v. Columbia Pub. Sch., 990 F.3d 1145, 1149 (8th Cir. 2021).

The SRO's actions were held as reasonable. Qualified immunity was granted and she was dismissed from the case.

Reviewed by David D. Phillips,
Deputy City Attorney

Top of Document

Inventory Search
United States v. Morris
No. 20-2298, 2021 U.S. App. LEXIS 12902 (8th Cir. Apr. 30, 2021)

Deputy Justin Parker stops a speeding car in Garland County, Arkansas to find that the driver had an outstanding warrant. Parker arrests Morris and asks him if he has a preference on the towing company. Morris asks for Martin's Towing. Parker performs a search of the vehicle and finds methamphetamine and paraphernalia. Morris has a large sum of cash on his person at arrest and more cash is located in the vehicle. Parker contacts Martin's Towing and has the car impounded. Parker failed to complete some department-required forms.

Morris alleges an unconstitutional search and seeks to have all evidence suppressed. Morris claims he was fully in control of the vehicle at all times during his arrest and did not consent to a search. Morris claims that because Deputy Parker used the requested tow service, Morris never lost control over the vehicle.

"After lawfully taking custody of an automobile, police may search the automobile without a warrant to produce an inventory of the automobile's contents." United States v. Morris, No. 20-2298, 2021 U.S. App. LEXIS 12902, at *4 (8th Cir. Apr. 30, 2021). Courts review the totality of circumstances to see if the actions of law enforcement were reasonable.

The Court in this case noted that Morris was lawfully under arrest and no one else was at the scene to take custody of the vehicle. Morris could show no factor that suggested he had somehow maintained control of his vehicle after he was arrested. The decision to tow the vehicle at arrest was consistent with departmental policy.

Inventory searches may be performed to protect the property interests of the department and of the arrested individual. Inventory searches are considered reasonable so long as it is not a "pretext or raised as a "ruse for a general rummaging in order to discover incriminating evidence,"" Morris, at *6 (quoting Florida v. Wells, 495 U.S. 1, 4, 110 S. Ct. 1632, 109 L. Ed. 2d 1 (1990)).

The lower Court held that Deputy Parker's failure to complete department-required forms made the search a departure from departmental policy. Though the search was not conducted in accordance with "standardized police procedure," it was still held to be reasonable.

The conviction was affirmed.

Arkansas law on conducting inventory searches is the same as in federal law. Welch v. State, quoting Florida v. Wells, explained the legal requirements in Arkansas:

> Inventory or administrative searches are excepted from the requirement of probable cause and a search warrant. The purpose of an inventory search is to protect the property, the police, and the public. ... The rationale is that police officers can better account for the property if they have an accurate record of what is contained in a vehicle when it is impounded. Moreover, the police and the public are protected by ensuring that the vehicle does not contain explosives or other harmful items. As part of an inventory search, the police are permitted not only to search the vehicle, but also the containers within the vehicle.
>
> In order for a search of a properly detained vehicle to fall within the inventory search exception to the search warrant requirement, there must be standard operating procedures established by the law enforcement agency conducting the search. ... The procedures must be followed and the inventory search must not be conducted solely for investigative purposes.
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> Welch v. State, 330 Ark. 158, 164, 955 S.W.2d 181, 183-84 (1997)

Reviewed by David D. Phillips,
Deputy City Attorney

Top of Document

Torres v. Madrid

TITLE: Supreme Court of United States Holds Person Shot by Police Who Managed to Escape Was Nonetheless Seized by Police

FACTS TAKEN FROM THE CASE

On July 15, 2014, four New Mexico State Police officers arrived at an apartment complex in Albuquerque to execute an arrest warrant for a woman who was accused of white collar crimes, but who was also suspected of having been involved in drug trafficking, murder, and other violent crimes. Officers saw Roxanne Torres standing with another person near a Toyota FJ Cruiser in the parking lot of the complex, and police concluded that neither Torres nor her companion was the target of the warrant. As officers approached the car, the companion departed, and Torres, who was at the time experiencing methamphetamine withdrawal, got into the driver's seat. Officers attempted to speak with Torres, who did not notice their presence until one of them tried to open the door of her vehicle.

Officers were wearing tactical vests marked with police identification, but Torres claimed that she saw only that they had guns. Torres thought the officers were carjackers trying to steal her car, and she hit the gas to escape them. According to Torres, officers did not stand in the path of her vehicle, but two officers fired their service pistols to stop her. The two officers fired thirteen shots at Torres, striking her twice in the back and temporarily paralyzing her left arm. Steering with her right arm, Torres accelerated and exited through the apartment complex, drove a short distance, and stopped in a parking lot. After asking a bystander to report an attempted carjacking, Torres stole a Kia Soul that happened to be idling nearby and drove seventy-five miles to Grants, New Mexico. The hospital in Grants airlifted her to another hospital back in Albuquerque, where police arrested her the next day. She pleaded no contest to aggravated fleeing from a law enforcement officer, assault on a police officer, and unlawfully taking a motor vehicle.

Later, Torres sought damages from the two officers who fired shots at her under 42 U.S.C. § 1983, claiming that the officers applied excessive force, making the shooting an unreasonable seizure under the Fourth Amendment. The District Court granted summary judgment to the officers, and the Court of Appeals for the Tenth Circuit affirmed on the ground that a suspect's continued flight after being shot by police negates a Fourth Amendment excessive force claim.

ARGUMENT AND DECISION BY THE SUPREME COURT OF THE UNITED STATES

The U.S. Supreme Court granted certiorari to decide whether a seizure occurs when an officer shoots someone who temporarily eludes capture after the shooting. The Court concluded that the answer is yes: the application of physical force to the body of a person with intent to restrain is a seizure, even if the force does not succeed in subduing the person.

The Court stated that the Fourth Amendment protects the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches in seizures. The Court said that the seizure of a person can take the form of physical force or the show of authority that in some way restrains the liberty of the person. The Court said that the question before it is whether the application of physical force is a seizure if the force, despite hitting its target, fails to stop the person.

In reaching its holding stated above, the Court analyzed a number of old common law cases. The Court stated that it was clear that the common law rule was that the application of force gives rise to an arrest, even if the officer did not secure control over the arrestee. Even so, the Court stressed that the application of the common law rule does not transform every physical contact between a government employee and a member of the public into a Fourth Amendment seizure. The Court said that a seizure requires the use of force with intent to restrain, and accidental force will not qualify, nor will force intentionally applied for some other purpose satisfy the rule. The Court noted that in this opinion, it considered only force used to apprehend. The Court said that the appropriate inquiry is whether the challenged conduct objectively manifests an intent to restrain. While a mere touch can be enough for a seizure, the amount of force remains pertinent in assessing the objective intent to restrain. A tap on the shoulder to get one's attention will rarely exhibit such an intent. The Court said that the seizure does not depend on the subjective perceptions of the seized person.

The Court said that the rule it announced herein is narrow. In addition to the requirement of intent to restrain, a seizure by force – absent submission – lasts only as long as the application of force. That is, the Fourth Amendment does not recognize any continuing arrest during the period of fugitivity. The officers' shooting of Torres applied physical force to her body and objectively manifested an intent to restrain her from driving away. The officers seized Torres for the instant that the bullets struck her.

In conclusion, the Court said that it held that the application of physical force to the body of a person with intent to restrain is a seizure even if the person does not submit and is not subdued. The Court said that a seizure is just the first step in the analysis, and that the Fourth Amendment does not forbid all or even most seizures, but only unreasonable ones. The Court said that all it decided is that the officers seized Torres by shooting her with intent to restrain her movement. It left open any questions regarding the unreasonableness of the seizure, the damages caused by the seizure, and the officers' entitlement to qualified immunity.

Case: This case was decided by the Supreme Court of the United States on March 25, 2021, and was an appeal from the United States Court of Appeals for the Tenth Circuit. The case citation is Torres v. Madrid, 592 U.S. _____ (2021).

Review and Analysis by Senior Deputy City Attorney Taylor Samples

Top of Document

Community Caretaking Function for Automobiles, Only

Caniglia v. Strom
No. 20-157, 2021 U.S. LEXIS 2582 (May 17, 2021)
Opinion of the
Supreme Court of the United States

Edward Caniglia brandished a firearm in front of his wife and asked her to shoot him with it. She declined the offer and left for the evening. The next day, she could not reach Caniglia and called the police for a welfare check. The police located Caniglia on his porch outside his residence. Caniglia denied being suicidal. At police insistence, Caniglia agreed to voluntarily go for a mental examination, if they did not confiscate his weapons. Once Caniglia had left, police entered his dwelling and confiscated his weapons.

The civil rights lawsuit filed by Caniglia against the Rhode Island police alleged a violation of the Fourth Amendment of the US Constitution and the US Supreme Court granted certiorari to answer the question of whether the "community caretaking function" of law enforcement, as expressed in the 1971 case of Cady v. Dombrowski, 413 U.S. 433, 93 S. Ct. 2523 (1973), applies to homes to the same extent as that case extended the doctrine to automobiles. SCOTUS held that it did not.

In the case of Cady v. Dombrowski, law enforcement officers searched the disabled and towed car of a drunken out-of-jurisdiction officer to locate his service weapon, which was believed to be still in the car and unsecured. The search was performed without a warrant or consent. Police instead found evidence linking Cady to a murder. In denying the motion to suppress the evidence, the Court in that case recognized a "community caretaking" function performed primarily by state and local officers as an exception to the warrant requirement. This exception was described in terms of "reasonable actions" by law enforcement officers to protect the community from danger.

> Because of the extensive regulation of motor vehicles and traffic, and also because of the frequency with which a vehicle can become disabled or involved in an accident on public highways, the extent of police-citizen contact involving automobiles will be substantially greater than police-citizen contact in a home or office. Some such contacts will occur because the officer may believe the operator has violated a criminal statute, but many more will not be of that nature. Local police officers, [***715] unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.
>
> Cady v. Dombrowski, 413 U.S. 433, 441, 93 S. Ct. 2523, 2528 (1973)

The Court noted that the holding of Cady was specifically focused on an automobile and not a home or dwelling. "What is reasonable for vehicles is different from what is reasonable for homes." Caniglia v. Strom, at *7. Specifically, the Court held that the community caretaking function applies to automobiles and not to homes or dwellings.

In his concurring opinion, Chief Justice Roberts cited Brigham City v. Stuart, 547 U.S. 398, 126 S. Ct. 1943 (2006). In that case, while responding to a loud party call, officers looking through a screen door observed a fight going on in the house. One participant in the fight was spitting blood. Officers entered the home without consent or a warrant.

The Court held that the actions of police were reasonable under the circumstances in Brigham. The need to assist the seriously injured justified the warrantless entry there. Such a situation is considered an "emergency search" as codified in Arkansas Rules of Criminal Procedure, Rule 14.3. Though a concurring opinion in Caniglia referred to the Brigham case, it is distinct from the circumstances of Caniglia and does not fully conform to the concept of "community caretaking."

Reviewed by David D. Phillips,
Deputy City Attorney

Edward Caniglia. Photo by Kris Craig, The Providence Journal.
The Providence Journal, 11:54 a.m. ET May 17, 2021
https://www.providencejournal.com/story/news/courts/2021/05/17/u-s-supreme-court-rules-cranston-police-violated-gun-owners-rights/5129325001/

Top of Document